

Introduced by Senators Torlakson, Ducheny, and Dunn

February 18, 2005

An act to amend Section 65589.5 of the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

SB 575, as introduced, Torlakson. Housing development projects.

The Planning and Zoning Law requires that a local agency not disapprove a housing development project, including farmworker housing, for very low, low-, or moderate-income households or condition its approval, including through the use of design review standards, in a manner that renders the project infeasible for development for those households unless it makes written findings, based upon substantial evidence in the record, as to one of a number of specified conditions.

The Planning and Zoning Law also requires that in any action to enforce these provisions, if a court finds that the local agency disapproved the project or conditioned its approval without making the required findings or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment to compel compliance with these provisions within 60 days, including an award of reasonable attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development, and may issue further orders to ensure that the purposes and policies of these provisions are fulfilled if its order or judgment has not been carried out within the 60-day period.

This bill would revise the conditions upon which a disapproval or a conditional approval of the housing development project is based. It would also delete that provision that authorizes the court to issue further orders to ensure that the purposes and policies of these

provisions are fulfilled and would, instead, authorize the court to vacate the decision of the local agency and direct the local agency to issue any necessary approval or permit to the applicant, as specified. The bill would also require the court to award actual damages to the plaintiff or petitioner who proposed the housing development, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65589.5 of the Government Code is
2 amended to read:
3 65589.5. (a) The Legislature finds and declares all of the
4 following:
5 (1) The lack of housing is a critical problem that threatens the
6 economic, environmental, and social quality of life in California.
7 (2) California housing has become the most expensive in the
8 nation. The excessive cost of the state's housing supply is
9 partially caused by activities and policies of many local
10 governments that limit the approval of housing, increase the cost
11 of land for housing, and require that high fees and exactions be
12 paid by producers of housing.
13 (3) Among the consequences of those actions are
14 discrimination against low-income and minority households, lack
15 of housing to support employment growth, imbalance in jobs and
16 housing, reduced mobility, urban sprawl, excessive commuting,
17 and air quality deterioration.
18 (4) Many local governments do not give adequate attention to
19 the economic, environmental, and social costs of decisions that
20 result in disapproval of housing projects, reduction in density of
21 housing projects, and excessive standards for housing projects.
22 (b) It is the policy of the state that a local government not
23 reject or make infeasible housing developments that contribute to
24 meeting the housing need determined pursuant to this article
25 without a thorough analysis of the economic, social, and
26 environmental effects of the action and without complying with
27 subdivision (d).
28 (c) The Legislature also recognizes that premature and
29 unnecessary development of agricultural lands for urban uses

continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low- or moderate-income households or condition approval, including through the use of design review standards, in a manner that renders the project infeasible for development for the use of very low, low- or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

~~(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and that is in substantial compliance with this article, and the development project is not needed for the jurisdiction to meet its share of the regional housing need for very low, low-, or moderate-income housing.~~

~~(2)~~ The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

~~(3)~~

(2) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

~~(4)~~

1 (3) The development project is proposed on land zoned for
2 agriculture or resource preservation that is surrounded on at least
3 two sides by land being used for agricultural or resource
4 preservation purposes, or which does not have adequate water or
5 wastewater facilities to serve the project.

6 ~~(5) The~~

7 (4) *Except as provided in subparagraphs (A) and (B), the*
8 development project is inconsistent with both the jurisdiction's
9 zoning ordinance and general plan land use designation as
10 specified in any element of the general plan as it existed on the
11 date the application was deemed complete, and the jurisdiction
12 has adopted a *revised* housing element *in accordance with*
13 *Section 65588 that is* in substantial compliance with this article.

14 ~~This subdivision~~

15 (A) *This paragraph* cannot be utilized to disapprove a housing
16 development project defined in subdivision (a) if the
17 development project is proposed on a site that is identified as
18 *suitable or available* for very low, low-, or moderate-income
19 households in the jurisdiction's housing element, and consistent
20 with the density specified in the housing element, even though it
21 is inconsistent with both the jurisdiction's zoning ordinance and
22 general plan land use designation.

23 (B) *If the local agency's housing element has neither been*
24 *self-certified pursuant to Section 65585.1 nor been determined by*
25 *the department pursuant to Section 65585 to be in substantial*
26 *compliance with this article based at least in part on the*
27 *inadequacy of sites to accommodate the community's share of the*
28 *regional housing need as determined pursuant to Section 65584,*
29 *this subdivision cannot be utilized to disapprove a housing*
30 *development project defined in subdivision (a) proposed for a*
31 *parcel designated in any element of the general plan for*
32 *residential or commercial uses.*

33 (e) Nothing in this section shall be construed to relieve the
34 local agency from complying with the Congestion Management
35 Program required by Chapter 2.6 (commencing with Section
36 65088) of Division 1 of Title 7 or the California Coastal Act
37 (Division 20 (commencing with Section 30000) of the Public
38 Resources Code). Neither shall anything in this section be
39 construed to relieve the local agency from making one or more of
40 the findings required pursuant to Section 21081 of the Public

Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development project. Nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of either of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to

1 moderate-income households as defined in Section 50093 of the
2 Health and Safety Code, or middle-income households, as
3 defined in Section 65008 of this code. Housing units targeted for
4 lower income households shall be made available at a monthly
5 housing cost that does not exceed 30 percent of 60 percent of
6 area median income with adjustments for household size made in
7 accordance with the adjustment factors on which the lower
8 income eligibility limits are based. Housing units targeted for
9 persons and families of moderate income shall be made available
10 at a monthly housing cost that does not exceed 30 percent of 100
11 percent of area median income with adjustments for household
12 size made in accordance with the adjustment factors on which the
13 moderate income eligibility limits are based.

14 (4) “Area median income” means area median income as
15 periodically established by the Department of Housing and
16 Community Development pursuant to Section 50093 of the
17 Health and Safety Code. The developer shall provide sufficient
18 legal commitments to ensure continued availability of units for
19 very low or low-income households in accordance with the
20 provisions of this subdivision for 30 years.

21 (5) “Neighborhood” means a planning area commonly
22 identified as such in a community’s planning documents, and
23 identified as a neighborhood by the individuals residing and
24 working within the neighborhood. Documentation demonstrating
25 that the area meets the definition of neighborhood may include a
26 map prepared for planning purposes which lists the name and
27 boundaries of the neighborhood.

28 (6) “Disapprove the development project” includes any
29 instance in which a local agency does either of the following:

30 (A) Votes on a proposed housing development project
31 application and the application is disapproved.

32 (B) Fails to comply with the time periods specified in
33 subparagraph (B) of paragraph (1) of subdivision (a) of Section
34 65950. An extension of time pursuant to Article 5 (commencing
35 with Section 65950) shall be deemed to be an extension of time
36 pursuant to this paragraph.

37 (i) If any city, county, or city and county denies approval or
38 imposes restrictions, including design changes, a reduction of
39 allowable densities or the percentage of a lot that may be
40 occupied by a building or structure under the applicable planning

1 and zoning in force at the time the application is deemed
2 complete pursuant to Section 65943, that have a substantial
3 adverse effect on the viability or affordability of a housing
4 development for very low, low-, or moderate-income households,
5 and the denial of the development or the imposition of
6 restrictions on the development is the subject of a court action
7 which challenges the denial, then the burden of proof shall be on
8 the local legislative body to show that its decision is consistent
9 with the findings as described in subdivision (d) and that the
10 findings are supported by substantial evidence in the record.

11 (j) When a proposed housing development project complies
12 with applicable, objective general plan and zoning standards and
13 criteria, including design review standards, in effect at the time
14 that the housing development project's application is determined
15 to be complete, but the local agency proposes to disapprove the
16 project or to approve it upon the condition that the project be
17 developed at a lower density, the local agency shall base its
18 decision regarding the proposed housing development project
19 upon written findings supported by substantial evidence on the
20 record that both of the following conditions exist:

21 (1) The housing development project would have a specific,
22 adverse impact upon the public health or safety unless the project
23 is disapproved or approved upon the condition that the project be
24 developed at a lower density. As used in this paragraph, a
25 "specific, adverse impact" means a significant, quantifiable,
26 direct, and unavoidable impact, based on objective, identified
27 written public health or safety standards, policies, or conditions
28 as they existed on the date the application was deemed complete.

29 (2) There is no feasible method to satisfactorily mitigate or
30 avoid the adverse impact identified pursuant to paragraph (1),
31 other than the disapproval of the housing development project or
32 the approval of the project upon the condition that it be
33 developed at a lower density.

34 (k) If in any action brought to enforce the provisions of this
35 section, a court finds that the local agency disapproved a project
36 or conditioned its approval in a manner rendering it infeasible for
37 the development of housing for very low, low-, or
38 moderate-income households, including farmworker housing,
39 without making the findings required by this section or without
40 making sufficient findings supported by substantial evidence, the

1 court shall issue an order or judgment compelling compliance
2 with this section within 60 days, including, but not limited to, an
3 order that the local agency take action on the development
4 project. The court shall retain jurisdiction to ensure that its order
5 or judgment is carried out and shall award reasonable attorney's
6 fees, *actual damages*, and costs of suit to the plaintiff or
7 petitioner who proposed the housing development, except under
8 extraordinary circumstances in which the court finds that
9 awarding fees *or damages* would not further the purposes of this
10 section. If the court determines that its order or judgment has not
11 been carried out within 60 days, the court may ~~issue further~~
12 ~~orders as provided by law to ensure that the purposes and policies~~
13 ~~of this section are fulfilled~~ *vacate the decision of the local agency*
14 *and direct the local agency to issue any necessary approval or*
15 *permit to the applicant. The local agency shall carry out the*
16 *order of the court within 30 days of its entry and, upon failure to*
17 *do so, the order of the court shall for all purposes, be deemed to*
18 *be the action of the local agency, unless the applicant consents to*
19 *a different decision or order by the local agency.*

20 (l) In any action, the record of the proceedings before the local
21 agency shall be filed as expeditiously as possible and,
22 notwithstanding Section 1094.6 of the Code of Civil Procedure,
23 all or part of the record may be filed (1) by the petitioner with the
24 petition or petitioner's points and authorities, (2) by the
25 respondent with respondent's points and authorities, (3) after
26 payment of costs by the petitioner, or (4) as otherwise directed by
27 the court. If the expense of preparing the record has been borne
28 by the petitioner and the petitioner is the prevailing party, the
29 expense shall be taxable as costs.